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**JEANNE G. QUINATA**  
Clerk of Court

**LUJAN AGUIGUI & PEREZ LLP**  
Attorneys at Law  
Pacific News Building, Suite 300  
238 Archbishop Flores Street  
Hagåtña, Guam 96910  
Telephone (671) 477-8064/5  
Facsimile (671) 477-5297

*Attorneys for Defendant In Hyuk Kim*

**IN THE UNITED STATES DISTRICT COURT OF GUAM  
FOR THE TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MI KYUNG BOSLEY, aka Mi Kyung Park,  
and IN HYUK KIM, aka Dominic,

Defendants.

CRIMINAL CASE NO. 07-00064

**DEFENDANT IN HYUK KIM'S REPLY  
GOVERNMENT'S RESPONSE TO  
MOTION TO SUPPRESS STATEMENTS  
OF CO-DEFENDANT MI KYUNG BOSLEY**

COMES NOW Defendant In Hyuk Kim and respectfully submits his Reply to the Government's Response to the Motion to Suppress co-Defendant Mi Kyung Bosley's pretrial statements.

In Defendant In Hyuk Kim's ("Defendant") Motion to Suppress, Defendant moves to exclude the pretrial statements of co-Defendant Mi Kyung Bosley ("Bosley") pursuant to the United States Supreme Court's holding in Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968). The Government, in response, has raised absolutely no argument against exclusion under Bruton. Therefore, the Government consequently concedes to exclusion under Bruton.

While the Government does not challenge Defendant's Bruton argument, it does contend that Bosley's pretrial statements made during the course of the conspiracy are admissible under

1 the co-conspirator exception to hearsay in Federal Rule of Evidence 801(d)(2)(E). As the  
2 Government states in its Response, before admitting into evidence a statement of a co-  
3 conspirator, the government must prove the existence of a conspiracy by establishing a prima  
4 facie case through the introduction of substantial independent evidence other than the contested  
5 hearsay. (Gov't's Response at 6 (citing United States v. Layton, 720 F. 2d 548, 555 (9th Cir.  
6 1983); United States v. Perez, 658 F. 2d 654, 658 (9th Cir. 1981)). "[T]he court must have  
7 independent evidence of the conspiracy and of the defendant's connection to it, and must  
8 conclude that the statement was made both during and in furtherance of the conspiracy." Layton,  
9 720 F. 2d at 555.

11 Here, the Government asserts that there is independent evidence to show the existence of a  
12 conspiracy and the defendant's connection to it: "the two meetings at King's, her [Bosley's]  
13 subsequent rendezvous with the defendant at the Mai'ana Hotel, and the defendant's own  
14 statements, which he made at King's on January 16." However, none of this independent  
15 evidence establishes either a conspiracy or Defendant's connection to one.

17 First, the two meetings at King's between the Government's informant and Bosley neither  
18 show the existence of a conspiracy nor Defendant's connection to a conspiracy. Both meetings  
19 allegedly occurred between Bosley and a Government informant (or "cooperating defendant").  
20 As a conspiracy requires an agreement between at least two individuals to commit a crime and the  
21 agreement cannot be established with evidence between one alleged conspirator and a  
22 government informant, United States v. Lo, 447 F. 3d 1212, 1225 (9th Cir. 2006), the meetings  
23 fail to establish the existence of a conspiracy and Defendant's connection to a conspiracy.

25 Second, the alleged meeting between Bosley and Defendant at the Mai'ana Hotel fails to  
26 show evidence of a conspiracy nor Defendant's connection to a conspiracy. A defendant's mere  
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1 presence at the scene of a crime is not enough to constitute the "slight evidence" of the  
2 defendant's knowledge and participation in a conspiracy. See United States v. Weaver, 594 F. 2d  
3 1272, 1275 (9th Cir. 1979). Thus, Defendant's presence at Mai'Ana fails to show a conspiracy  
4 nor Defendant's connection to one.

5  
6 Third, Defendant's alleged statements at King's Restaurant are also insufficient. The  
7 statements alone show no alleged conspiracy with Bosley.

8 Therefore, the Government has failed to meet its burden of showing substantial  
9 independent evidence of a conspiracy and Defendant's connection to it. As a result, Bosley's  
10 pretrial statements must be excluded.

11 **III. CONCLUSION**

12 Based on the arguments presented, Defendant In Hyuk Kim respectfully requests that co-  
13 defendant Mi Kyung Bosley's pretrial statements.  
14

15 **RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of January, 2008.

16 **LUJAN AGUIGUI & PEREZ LLP**

17  
18 By:

  
19 **PETER C. PEREZ, ESQ.**  
20 *Attorneys for Defendant In Hyuk Kim*

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